IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

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BRIMONIDINE PATENT LITIGATION

MDL Docket No. 07-md-01866 GMS

REVISED JOINT CLAIM CHARTS

'078 patent¹²

Asserted Claim of '078 patent	Allergan's Proposed Construction	Apotex's Proposed Construction
Claim 1		Community
1. A method for preserving an aqueous ophthalmic formulation so as to enhance the shelf life thereof comprising	Agreed-upon construction: The claim requires a method for preserving an aqueous ophthalmic formulation to enhance the shelf life of the formulation.	
incorporating into said aqueous ophthalmic formulation stabilized chlorine dioxide in an amount effective to act as the sole preservative in said aqueous ophthalmic formulation,	Agreed-upon construction: The claimed method requires in ophthalmic formulation of stabi amount effective to act as the so formulation.	llized chlorine dioxide in an
at least one ophthalmically acceptable buffer component in an amount effective to maintain said aqueous ophthalmic formulation at a pH in the range of about 6.8 to about 8,	Agreed-upon construction: The claimed method requires in ophthalmic formulation of at lea acceptable buffer component in maintain the formulation at a pl 6.8 to approximately 8.	ast one ophthalmically
and at least one ophthalmically acceptable	Agreed-upon construction: The claimed method requires in	acorporation into the aqueous

Allergan and Apotex agree on the construction of all claim terms of the '078 patent.

Allergan and Apotex agree the ordinary meaning of the term "about" is "approximately." See Merck & Co., Inc. v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1377 (Fed. Cir. 2005); Allergan Inc. v. Alcon Inc., No. 04-968 (GMS) (D. Del. July 26, 2005) (order construing the terms of U.S. patent nos. 6,673,337 and 6,641,834).

No. 10. 10. 10. 10. 10. 10. 10. 10. 10. 10	
Asserted Claim of '078 patent	Allergan's Proposed Apotex's Proposed Construction Construction
tonicity component in an amount effective to maintain said aqueous ophthalmic formulation at an osmolality of at least about 200 mOsmol/kg,	ophthalmic formulation of at least one ophthalmically acceptable tonicity component in an amount effective to maintain the formulation at an osmolality of at least approximately 200 mOsmol/kg.
provided that said aqueous ophthalmic formulation is ophthalmically acceptable and no germicidally effective amounts of any positively charged, nitrogen-containing cationic polymers are incorporated into said aqueous ophthalmic formulation.	Agreed-upon construction: The claimed method requires that the aqueous ophthalmic formulation is ophthalmically acceptable and that it includes no germicidally effective amounts of any positively charged, nitrogen-containing cationic polymers.
Claim 2	
2. The method of claim 1 wherein said stabilized chlorine dioxide is present in said aqueous ophthalmic formulation in an amount in the range of about 0.0002 to about 0.02 weight/volume percent.	Agreed-upon construction: Claim 2 contains all the limitations of claim 1, with the further requirement that the stabilized chlorine dioxide is present in the formulation in an amount in the range of approximately 0.0002 to approximately 0.02 weight/volume percent.
Claim 3	
3. The method of claim 1 wherein said stabilized chlorine dioxide is present in said aqueous ophthalmic formulation in an amount in the range of about 0.004 to about 0.01 weight/volume percent.	Agreed-upon construction: Claim 3 includes all the limitations of claim 1, with the further requirement that the stabilized chlorine dioxide is present in the formulation in an amount in the range of approximately 0.004 to approximately 0.01 weight/volume percent.
Claim 4	
4. The method of claim 1 wherein said at least one ophthalmically acceptable buffer component is present in an amount effective to maintain said aqueous ophthalmic formulation at a pH in the range of about 7 to about 7.5.	Agreed-upon construction: Claim 4 includes all the limitations of claim 1, with the further requirement that at least one ophthalmically acceptable buffer component is present in an amount effective to maintain the formulation at a pH in the range of approximately 7 to approximately 7.5.

Asserted Claim of '078 patent	Allergan's Proposed Construction Apotex's Proposed Construction
Claim 5	
5. The method of claim 1	Agreed-upon construction:
wherein said at least one	Claim 5 includes all the limitations of claim 1, with the further
ophthalmically acceptable	requirement that at least one ophthalmically acceptable tonicity
tonicity component is present	component is present in an amount effective to maintain the
in an amount effective to	formulation at an osmolality in the range of approximately 200
maintain said aqueous	to approximately 400 mOsmol/kg.
ophthalmic formulation at an	
osmolality in the range of	
about 200 to about 400	
mOsmol/kg.	
Claim 6	
6. The method of claim 1	Agreed-upon construction:
wherein said aqueous	Claim 6 includes all the limitations of claim 1 with the further
ophthalmic formulation is a	requirement that the aqueous ophthalmic formulation is a
solution.	solution.
Claim 7	
7. A method for preserving an	Agreed-upon construction:
aqueous ophthalmic solution so as to enhance the shelf life	The claim requires a method for preserving an aqueous
thereof comprising	ophthalmic solution to enhance the shelf life of the solution.
incorporating into said	Agreed-upon construction:
aqueous ophthalmic solution	The claimed method requires incorporation into the aqueous
stabilized chlorine dioxide in	ophthalmic solution of stabilized chlorine dioxide in an amount
an amount effective to act as	effective to act as the sole preservative in the solution in the
the sole preservative in said	range of approximately 0.0002 to approximately 0.02
aqueous ophthalmic solution	weight/volume percent.
in the range of about 0.002 to	The state of the s
about 0.02 weight/volume	
percent,	
at least one ophthalmically	Agreed-upon construction:
acceptable buffer component	The claimed method requires incorporation into the aqueous
in an amount effective to	ophthalmic solution of at least one ophthalmically acceptable
maintain said aqueous	buffer component in an amount effective to maintain the
ophthalmic solution at a pH in	solution at a pH in the range of approximately 6.8 to
the range of about 6.8 to about	approximately 8.
8,	
and at least one	Agreed-upon construction:
ophthalmically acceptable	The claimed method requires incorporation into the aqueous
tonicity component in an	ophthalmic solution of at least one ophthalmically acceptable
amount effective to maintain	tonicity component in an amount effective to maintain the
said aqueous ophthalmic	solution at an osmolality in the range of approximately 200
solution at an osmolality in	mOsmol/kg to approximately 400 mOsmol/kg.
the range of about 200 to	

Asserted Claim of '078	Allergan's Proposed Apotex's Proposed
patent	Construction Construction
about 400 mOsmol/kg,	
provided that said aqueous	Agreed-upon construction:
ophthalmic solution is	The claimed method requires that the aqueous ophthalmic
ophthalmically acceptable and	solution is ophthalmically acceptable and that it includes
substantially no germicidally	substantially no germicidally effective amounts of any
effective amounts of any	positively charged, nitrogen-containing cationic polymers.
positively charged, nitrogen-	
containing cationic polymers	
are incorporated into said	
aqueous ophthalmic solution.	
Claim 8	
8. A preserved ophthalmic	Agreed-upon construction:
formulation comprising	The claim requires a preserved ophthalmic formulation.
an ophthalmically acceptable	Agreed-upon construction:
aqueous medium and,	The claimed formulation requires an ophthalmically acceptable aqueous medium.
included therein, stabilized	
chlorine dioxide in an amount	Agreed-upon construction: The claimed formulation requires the inclusion of stabilized
effective to act as the sole	chlorine dioxide in an amount effective to act as the sole
preservative in said	preservative in the ophthalmically acceptable aqueous
ophthalmically acceptable	medium.
aqueous medium,	
at least one ophthalmically	Agreed-upon construction:
acceptable buffer component	The claimed formulation requires the inclusion of at least one
in an amount effective to	ophthalmically acceptable buffer component in an amount
maintain said ophthalmically	effective to maintain the ophthalmically acceptable aqueous
acceptable aqueous medium at	medium at a pH in the range of approximately 6.8 to
a pH in the range of about 6.8	approximately 8.
to about 8,	
and at least one	Agreed-upon construction:
ophthalmically acceptable	The claimed formulation requires the inclusion of at least one
tonicity component in an	ophthalmically acceptable tonicity component in an amount
amount effective to maintain	effective to maintain the ophthalmically acceptable aqueous
said ophthalmically	medium at an osmolality of at least approximately 200
acceptable aqueous medium at	mOsmol/kg.
an osmolality of at least about	
200 mOsmol/kg,	A consideration
provided that said preserved	Agreed-upon construction:
ophthalmic formulation is ophthalmically acceptable and	The claimed formulation is ophthalmically acceptable and free of germicidally effective amounts of any positively charged,
is free of germicidally	nitrogen-containing cationic polymers.
effective amounts of any	muogen-containing canoine porymers.
positively charged, nitrogen-	
containing cationic polymers.	
comming outonic porymers.	

Asserted Claim of '078 patent	Allergan's Proposed Apotex's Proposed Construction Construction
Claim 9	
9. The preserved ophthalmic formulation of claim 8 wherein said stabilized chlorine dioxide is present in said preserved ophthalmic formulation in an amount in the range of about 0.0002 to	Agreed-upon construction: Claim 9 contains all the limitations of claim 8, with the further requirement that the stabilized chlorine dioxide is present in the formulation in an amount in the range of approximately 0.0002 to approximately 0.02 weight/volume percent.
about 0.02 weight/volume	
percent.	
Claim 10	May 1
10. The preserved ophthalmic formulation of claim 8 wherein said stabilized chlorine dioxide is present in said preserved ophthalmic formulation in an amount in the range of about 0.004 to about 0.01 weight/volume percent.	Agreed-upon construction: Claim 10 contains all the limitations of claim 8, with the further requirement that the stabilized chlorine dioxide is present in the formulation in an amount in the range of approximately 0.004 to approximately 0.01 weight/volume percent.
Claim 11	
11. The preserved ophthalmic formulation of claim 8 wherein said at least one ophthalmically acceptable tonicity component is selected from the group consisting of alkali metal chlorides and alkaline earth metal chlorides and mixtures thereof.	Agreed-upon construction: Claim 11 contains all the limitations of claim 8, with the further requirement that at least one ophthalmically acceptable tonicity component is selected from the group consisting of alkali metal chlorides and alkaline earth metal chlorides and mixtures thereof.
Claim 12	
12. The preserved ophthalmic formulation of claim 8 wherein said at least one ophthalmically acceptable tonicity component comprises sodium chloride.	Agreed-upon construction: Claim 12 contains all the limitations of claim 8, with the further requirement that at least one ophthalmically acceptable tonicity component comprises sodium chloride.
Claim 13	
13. The preserved ophthalmic formulation of claim 8 wherein said at least one ophthalmically acceptable tonicity component comprises	Agreed-upon construction: Claim 13 contains all the limitations of claim 8, with the further requirement that at least one ophthalmically acceptable tonicity component comprises an alkaline earth metal salt selected from the group consisting of calcium chloride and
an alkaline earth metal salt	magnesium chloride and mixtures thereof.

Asserted Claim of '078	Allergan's Proposed Apotex's Proposed
patent	Construction Construction
selected from the group	
consisting of calcium chloride	
and magnesium chloride and	
mixtures thereof.	
Claim 14	_ · · · · · · · · · · · · · · · · · · ·
14. The preserved ophthalmic	Agreed-upon construction:
formulation of claim 8	Claim 14 contains all the limitations of claim 8, with the
wherein said at least one	further requirement that at least one buffer component is
buffer component is selected	selected from the group consisting of potassium phosphates,
from the group consisting of	boric acid, sodium borate, sodium phosphates and mixtures
potassium phosphates, boric	thereof.
acid, sodium borate, sodium	
phosphates and mixtures	
thereof.	
Claim 15	
15. The preserved ophthalmic	Agreed-upon construction:
formulation of claim 8	Claim 15 contains all the limitations of claim 8, with the
wherein said at least one	further requirement that at least one ophthalmically acceptable
ophthalmically acceptable	buffer component is present in an amount effective to maintain
buffer component is present in	the ophthalmically acceptable aqueous medium at a pH in the
an amount effective to	range of approximately 7 to approximately 7.5.
maintain said ophthalmically	
acceptable aqueous medium at	
a pH in the range of about 7 to	
about 7.5.	
Claim 16	
16. The preserved ophthalmic	Agreed-upon construction:
formulation of claim 8	Claim 16 contains all the limitations of claim 8, with the
wherein said at least one	further requirement that at least one ophthalmically acceptable
ophthalmically acceptable	tonicity component is present in an amount effective to
tonicity component is present	maintain the ophthalmically acceptable aqueous medium at an
in an amount effective to	osmolality in the range of approximately 200 to approximately
maintain said ophthalmically	400 mOsmol/kg.
acceptable aqueous medium at	
an osmolality in the range of	
about 200 to about 400	
mOsmol/kg.	
Claim 17	
17. The preserved ophthalmic	Agreed-upon construction:
formulation of claim 8 which	
is a solution.	Claim 17 contains all the limitations of claim 8, with the
	further requirement that the formulation is a solution.
Claim 18	A 1
18. A preserved ophthalmic	Agreed-upon construction:
solution comprising	The claim requires a preserved ophthalmic solution.

Asserted Claim of '078 patent	Allergan's Proposed Construction Apotex's Proposed Construction
an ophthalmically acceptable aqueous solution and,	Agreed-upon construction: The claim requires an ophthalmically acceptable aqueous solution.
included therein, stabilized chlorine dioxide in an amount effective to act as the sole preservative in said ophthalmically aqueous acceptable solution in the range of about 0.002 to about 0.02 weight/volume percent,	Agreed-upon construction: The claimed solution requires the inclusion of stabilized chlorine dioxide in an amount effective to act as the sole preservative in the ophthalmically acceptable aqueous solution in the range of approximately 0.002 to approximately 0.02 weight/volume percent.
at least one ophthalmically acceptable buffer component in an amount effective to maintain said ophthalmically acceptable aqueous solution at a pH in the range of about 6.8 to about 8,	Agreed-upon construction: The claimed solution requires the inclusion of at least one ophthalmically acceptable buffer component in an amount effective to maintain the ophthalmically acceptable aqueous solution at a pH in the range of approximately 6.8 to approximately 8.
and at least one ophthalmically acceptable tonicity component in an amount effective to maintain said ophthalmically acceptable aqueous solution at an osmolality in the range of about 200 to about 400 mOsmol/kg,	Agreed-upon construction: The claimed solution requires the inclusion of at least one ophthalmically acceptable tonicity component in an amount effective to maintain the ophthalmically acceptable aqueous solution at an osmolality in the range of approximately 200 mOsmol/kg to approximately 400 mOsmol/kg.
provided that said preserved ophthalmic solution is ophthalmically acceptable and is free of germicidally effective amounts of any positively charged, nitrogencontaining polymers.	Agreed-upon construction: The claimed solution is ophthalmically acceptable and free of germicidally effective amounts of any positively charged, nitrogen-containing cationic polymers.

Asserted Claim of '873	Allergan's Proposed Apotex's Proposed
Patent	Construction Construction
Claim 1.	
1. A composition comprising:	
a therapeutically active	Agreed-upon construction:
component selected from the	The claimed composition contains a component selected from the
group consisting of alpha-2-	group consisting of an alpha-2-adrenergic agonist and mixtures
adrenergic agonists and	thereof, and that component is present in an amount that is
mixtures thereof, and being	effective to provide a therapeutic benefit to a patient to whom the
present in an amount effective	composition is administered.
to provide a desired	
therapeutic benefit to a patient	
to whom the composition is	
administered;	
a solubility enhancing	Agreed-upon construction:
component, other than a	The claimed composition contains an amount of a solubility
cyclodextrin, in an amount	enhancing component, which is a component other than a
effective to increase the	cylclodextrin that solubilizes more of the therapeutically active
solubility of the	component relative to a similar composition without the
therapeutically active	solubility enhancing component.
component in the composition	
relative to the solubility of an	
identical therapeutically	
active component in a similar	
composition without the	
solubility enhancing	
component;	
an oxy-chloro component in	Agreed-upon construction:
an effective amount to at least	The claimed composition contains an oxy-chloro component in
aid in preserving the	an effective amount to at least aid in preserving the composition
composition;	
and a liquid carrier	Agreed-upon construction:
component.	The claimed composition contains a liquid carrier component.
Claim 2.	
2. The composition of claim 1	Agreed-upon construction:
wherein the therapeutically	Claim 2 includes all of the limitations of claim 1, with the further
active component is selected	requirement that the therapeutically active component is selected
from the group consisting of	from the group consisting of imino-imidazolines, imidazolines,
imino-imidazolines,	imidazoles, azepines, thiazines, oxazolines, guanidines,
imidazolines, imidazoles,	catecholamines, and mixtures thereof.
azepines, thiazines,	
oxazolines, guanidines,	

Allergan and Apotex agree on the construction of all claim terms of the '873 patent.

Asserted Claim of '873 Patent	Allergan's Proposed Apotex's Proposed Construction Construction
catecholamines, and mixtures	
thereof.	
Claim 3.	
3. The composition of claim 1	Agreed-upon construction:
wherein the therapeutically	Claim 3 includes all of the limitations of claim 1, with the further
active component includes a	requirement that the therapeutically active component includes a
quinoxaline component.	quinoxaline component.
Claim 4.	
4. The composition of claim 3	Agreed-upon construction:
wherein the quinoxaline	Claim 4 includes all of the limitations of claim 3, with the further
component is selected from	requirement that the quinoxaline component is selected from the
the group consisting of	group consisting of quinoxalines, quinoxaline derivatives, and
quinoxalines, quinoxaline	mixtures thereof.
derivatives, and mixtures	
thereof.	
Claim 5.	·
5. The composition of claim 3	Agreed-upon construction:
wherein the quinoxaline	Claim 5 includes all of the limitations of claim 3, with the further
component is selected from	requirement that the quinoxaline component is selected from the
the group consisting of	group consisting of quinoxaline, (2-imidozolin-2-ylamino)
quinoxaline, (2-imidozolin-2-	quinoxaline, brimonidine, and brimonidine tartrate, and mixtures
ylamino) quinoxaline, 5-	thereof.
bromo-6-(2-imidozolin-2-	
ylamino) quinoxaline, and	
tartrate of 5-bromo-6-(2-	
imidozolin-2-ylamino)	
quinoxaline, and mixtures thereof.	
Claim 6.	<u></u>
	Agreed-upon construction:
6. The composition of claim 1 wherein the therapeutically	Claim 6 includes all of the limitations of claim 1, with the further
active component comprises a	requirement that the therapeutically active component comprises
tartrate of 5-bromo-6-(2-	brimonidine tartrate.
imidozolin-2-ylamino)	offinomane untate.
quinoxaline.	
Claim 7.	
7. The composition of claim 1	Agreed-upon construction:
wherein the therapeutically	Claim 7 includes all of the limitations of claim 1, with the further
active component has	requirement that the therapeutically active component has
increased diffusion through a	increased diffusion through a lipid membrane relative to an
lipid membrane relative to an	identical therapeutically active component in a similar
identical therapeutically	composition without the solubility enhancing component.
active component in a similar	Tompound mo dolaring amount or the control of the c
composition without the	
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Asserted Claim of '873	Approx 1 December 1
Patent	Allergan's Proposed Construction Construction
solubility enhancing	Construction
component.	
Claim 8.	
8. The composition of claim 1 wherein the solubility enhancing component is effective to increase the solubility in a biological environment of the therapeutically active component relative to the solubility in a biological environment of an identical therapeutically active component in a similar composition without the solubility enhancing component.	Agreed-upon construction: Claim 8 includes all of the limitations of claim 1, with the further requirement that the solubility enhancing component is effective to solubilize more in a biological environment of the therapeutically active component relative to the solubility in a biological environment of an identical therapeutically active component in a similar composition without the solubility enhancing component.
Claim 9.	
9. The composition of claim 1 wherein the solubility enhancing component comprises a polyanionic component.	Agreed-upon construction: Claim 9 includes all of the limitations of claim 1, with the furthe requirement that the solubility enhancing component comprises polyanionic component.
Claim 10.	
10. The composition of claim 9 wherein said polyanionic components is selected from the group consisting of anionic cellulose derivatives, anionic polymers derived from acrylic acid, anionic polymers derived from methacrylic acid, anionic polymers derived from alginic acid, anionic polymers derived from alginic acid, anionic polymers derived from amino acids and mixtures thereof. Claim 11.	Agreed-upon construction: Claim 10 includes all of the limitations of claim 9, with the further requirement that the said polyanionic component is selected from the group consisting of anionic cellulose derivatives, anionic polymers derived from acrylic acid, anionic polymers derived from methacrylic acid, anionic polymers derived from alginic acid, anionic polymers derived from amino acids and mixtures thereof.
11. The composition of claim	Agreed-upon construction:
1 wherein the solubility enhancing component comprises an anionic cellulose derivative.	Claim 11 includes all of the limitations of claim 1, with the further requirement that the solubility enhancing component comprises an anionic cellulose derivative.

Asserted Claim of '873 Patent	Allergan's Proposed Apotex's Proposed Construction
Claim 12.	
12. The composition of claim	Agreed-upon construction:
1 wherein the solubility	Claim 12 includes all of the limitations of claim 1, with the
enhancing component	further requirement that the solubility enhancing component
comprises a	comprises a carboxymethylcellulose.
carboxymethylcellulose.	
Claim 13.	
13. The composition of claim	Agreed-upon construction:
1 wherein the solubility	Claim 13 includes all of the limitations of claim 1, with the
enhancing component is	further requirement that the solubility enhancing component is
present in an amount in a	present in an amount in a range of approximately 0.1% (w/v) to
range of about 0.1% (w/v) to	approximately 30% (w/v).
about 30% (w/v).	
Claim 14.	
14. The composition of claim	Agreed-upon construction:
1 wherein the solubility	Claim 14 includes all of the limitations of claim 1, with the
enhancing component is	further requirement that the solubility enhancing component is
present in an amount in a	present in an amount in a range of approximately 0.2% (w/v) to
range of about 0.2% (w/v) to	approximately 10 (w/v).
about 10 (w/v).	
Claim 15.	
15. The composition of claim	Agreed-upon construction:
1 wherein the solubility	Claim 15 includes all of the limitations of claim 1, with the
enhancing component is	further requirement that the solubility enhancing component is
present in an amount in a	present in an amount in a range of approximately 0.2% (w/v) to
range of about 0.2% (w/v) to	approximately 0.6% (w/v).
about 0.6% (w/v).	
Claim 16.	
16. The composition of claim	Agreed-upon construction:
1 wherein the oxy-chloro	Claim 16 includes all of the limitations of claim 1, with the
component is selected from	further requirement that the oxy-chloro component is selected
the group consisting of	from the group consisting of hypochlorite components,
hypochlorite components,	perchlorate components, chlorite components and mixtures
perchlorate components,	thereof.
chlorite components and	
mixtures thereof.	
Claim 17.	Ţ
17. The composition of claim	Agreed-upon construction:
1 wherein the oxy-chloro	Claim 17 includes all of the limitations of claim 1, with the
component comprises a	further requirement that the oxy-chloro component comprises a
chlorite component.	chlorite component.
Claim 18.	
18. The composition of claim	Agreed-upon construction:
1 wherein the oxy-chloro	Claim 18 includes all of the limitations of claim 1, with the

	Asserted Claim of *873 Patent	Allergan's Proposed Construction Apotex's Proposed Construction
	component comprises	further requirement that the oxy-chloro component comprises
	stabilized chlorine dioxide.	stabilized chlorine dioxide.
	Claim 19.	
	19. The composition of claim	Agreed-upon construction:
	1, wherein the oxy-chloro	Claim 19 includes all of the limitations of claim 1, with the
	component is present in an	further requirement that the oxy-chloro component is present in
	amount of about 500 ppm	an amount of approximately 500 ppm (w/v) or less.
	(w/v) or less.	
Ī	Claim 20.	
-	20. The composition of claim	Agreed-upon construction:
ı,	1 wherein the oxy-chloro	Claim 20 includes all of the limitations of claim 1, with the
	component is present in an	further requirement that the oxy-chloro component is present in
	amount in a range of about 10	an amount in a range of approximately 10 ppm (w/v) to
	ppm (w/v) to about 200 ppm	approximately 200 ppm (w/v).
	(w/v).	wpp.o.m
ŀ	Claim 23.	
	23. The composition of claim	Agreed-upon construction:
	1 wherein the liquid carrier is	Claim 23 includes all of the limitations of claim 1, with the
	an aqueous liquid carrier	further requirement that the liquid carrier is an aqueous liquid
	component.	carrier component.
ŀ	Claim 24.	
ŀ	24. The composition of claim	Agreed-upon construction:
	1 which is a solution.	Claim 24 includes all of the limitations of claim 1, with the
	1 Willest 13 d Solution.	further requirement that the composition of claim 1 is a solution.
		ration requirement that the composition of claim 1 is a solution.
ŀ	Claim 25.	
ľ	25. The composition of claim	Agreed-upon construction:
	1 which has a pH of about 7	Claim 25 includes all of the limitations of claim 1, with the
	or greater.	further requirement that has a pH of approximately 7 or greater.
	Claim 26.	
	26. The composition of claim	Agreed-upon construction:
	1 which has a pH in a range of	Claim 26 includes all of the limitations of claim 1, with the
	about 7 to about 9.	further requirement that the composition has a pH in a range of
		approximately 7 to approximately 9.
	Claim 27.	* ** *
	27. The composition of claim	Agreed-upon construction:
	1 which is ophthalmically	Claim 27 includes all of the limitations of claim 1, with the
	acceptable.	further requirement that the composition is ophthalmically
		acceptable.
	Claim 28.	<u> </u>
•	28. A composition	
***************************************	comprising:	
Ì	a therapeutically active	Agreed-upon construction:
	component selected from the	The claimed composition contains a therapeutically active
ι		

Asserted Claim of '873 Patent	Allergan's Proposed Apotex's Proposed Construction Construction
group consisting of alpha-2- adrenergic agonists and mixtures thereof in an amount effective to provide a therapeutic benefit to a patient to whom the composition is administered;	component selected from the group consisting of alpha-2-adrenergic agonists and mixtures thereof in an amount effective to provide a therapeutic benefit to a patient to whom the composition is administered.
an anionic cellulose derivative in an amount effective to increase the solubility of the therapeutically active component;	Agreed-upon construction: The claimed composition contains an anionic cellulose derivative in an amount effective to solubilize more of the therapeutically active component.
a chlorite component in an effective amount to at least aid in preserving the composition;	Agreed-upon construction: The claimed composition contains a chlorite component in an effective amount to at least aid in preserving the composition
and an aqueous liquid carrier component.	Agreed-upon construction: The claimed composition contains an aqueous liquid carrier component.
Claim 29.	
29. The composition of claim 28 wherein the therapeutically active component comprises a tartrate of 5-bromo-6-(2-imidozolin-2-ylamino) quinoxaline.	Agreed-upon construction: Claim 29 includes all of the limitations of claim 28, with the further requirement that the therapeutically active component comprises brimonidine tartrate.
Claim 30.	I
30. The composition of claim 28 wherein the anionic cellulose derivative comprises carboxymethylcellulose.	Agreed-upon construction: Claim 30 includes all of the limitations of claim 28, with the further requirement that the anionic cellulose derivative comprises carboxymethylcellulose.
Claim 31.	
31. The composition of claim 28 wherein the anionic cellulose derivative is present in an amount in a range of about 0.2% to about 0.6% (w/v).	Agreed-upon construction: Claim 31 includes all of the limitations of claim 28, with the further requirement that the anionic cellulose derivative is present in an amount in a range of approximately 0.2% to approximately 0.6% (w/v).
Claim 32.	
32. A composition comprising:	
a tartrate of 5-bromo-6-(2- imidozolin-2-ylamino) quinoxaline in an amount	Agreed-upon construction: The claimed composition contains brimonidine tartrate in an amount effective to provide a therapeutic benefit to a patient to

Asserted Claim of '873 Patent	Allergan's Proposed Construction Apotex's Proposed Construction
effective to provide a therapeutic benefit to a patient to whom the composition is administered;	whom the composition is administered.
a solubility enhancing component in an amount effective to increase the solubility of the tartrate of 5-bromo-6-(2-imidozolin-2-ylamino) quinoxaline;	Agreed-upon construction: The claimed composition contains a solubility enhancing component in an amount effective to solubilize more of brimonidine tartrate.
a chlorite component in an effective amount to at least aid in preserving the composition;	Agreed-upon construction: The claimed composition contains a chlorite component in an effective amount to at least aid in preserving the composition.
and an aqueous liquid carrier component.	Agreed-upon construction: The claimed composition contains an aqueous liquid carrier component.
Claim 33. 33. The composition of claim 32 wherein the solubility enhancing component comprises a carboxymethylcellulose.	Agreed-upon construction: Claim 33 includes all of the limitations of claim 32, with the further requirement that the solubility enhancing component comprises a carboxymethylcellulose.
Claim 34. 34. The composition of claim 32 which is ophthalmically acceptable.	Agreed-upon construction: Claim 34 includes all of the limitations of claim 32, with the further requirement that the composition of claim 32 is ophthalmically acceptable.
Claim 35. 35. A composition comprising:	
a therapeutically active component in an amount effective to provide a desired therapeutic benefit to a patient to whom the composition is administered;	Agreed-upon construction: The claimed composition contains a therapeutically active component in an amount effective to provide a desired therapeutic benefit to a patient to whom the composition is administered.
an oxy-chloro component in an effective amount to at least aid in preserving the composition;	Agreed-upon construction: The claimed composition contains an oxy-chloro component in an effective amount to at least aid in preserving the composition.
and a liquid carrier component, wherein the composition is substantially	Agreed-upon construction: The claimed composition contains a liquid carrier component, wherein the composition is substantially free of cyclodextrins.

free of cyclodextrins. Claim 36. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of antibacterials, antihistamines, decongestants, antiinflammatories, antiparasitics, miotics, anticholinergics, adrenergics, antivirals, local anesthetics, antifungals, amoebicidals, trichomonocidals, analgesics, mydriatics, antiglaucoma drugs, carbonic anhydrase inhibitors, ophthalmic diagnostic agents, ophthalmic agents used as adjuvants in surgery, chelating agents, antihopertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. Agreed-upon construction: Claim 36 includes all of the limitations of claim 35, with the further requirement that the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 37. Construction Agreed-upon construction: Claim 36 includes all of the limitations of claim 35, with the further requirement that the therapeutically, antiinflammatories, antiin		
Claim 36. 36. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of antibacterials, antihistamines, decongestants, antiinflammatories, antiparasitics, miotics, anticholinergics, adrenergics, antivirals, local anesthetics, antifungals, amoebicidals, trichomonocidals, analgesics, mydriatics, antiglaucoma drugs, carbonic anhydrase inhibitors, ophthalmic diagnostic agents, ophthalmic dagents used as adjuvants in surgery, chelating agents, antimpertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.		
36. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of antibacterials, antihistamines, decongestants, antihistamines, decongestants, antiinflammatories, antiparasitics, miotics, anticholinergics, adrenergics, antivirals, local anesthetics, antivirals, local anesthetics, antipagals, amoebicidals, trichomonocidals, analgesics, mydriatics, antiglaucoma drugs, carbonic anhydrase inhibitors, ophthalmic diagnostic agents, ophthalmic diagnostics, antihypertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.	free of cyclodextrins.	
35 wherein the therapeutically active component is selected from the group consisting of antibacterials, antihistamines, decongestants, antiinflammatories, antiparasitics, miotics, anticholinergics, adrenergics, antivirals, local anesthetics, antivirals, local anesthetics, anticholinergics, adrenergics, antivirals, local anesthetics, antifungals, amoebicidals, trichomonocidals, analgesics, mydriatics, antiglaucoma drugs, carbonic anhydrase inhibitors, ophthalmic diagnostic agents, ophthalmic diagnostics, antihypertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.	Claim 36.	
active component is selected from the group consisting of antibacterials, antihistamines, decongestants, antihistamines, decongestants, antihistamines, decongestants, antiinflammatories, antiinflammatories, antiparasitics, miotics, anticholinergics, adrenergics, antivirals, local anesthetics, antifungals, amoebicidals, trichomonocidals, analgesics, mydriatics, antiglaucoma drugs, carbonic anhydrase inhibitors, ophthalmic diagnostic agents, ophthalmic diagnostic agents, ophthalmic agents used as adjuvants in surgery, chelating agents, antineoplascics, antineopla		l
from the group consisting of antibacterials, antihistamines, decongestants, antihistamines, decongestants, antiinflammatories, antiinflammatories, anticollinergics, adrenergics, anticholinergics, adrenergics, anticholinergics, adrenergics, anticholinergics, adrenergics, anticholinergics, anticholine		r
antibacterials, antihistamines, decongestants, antiinflammatories, antiparasitics, miotics, antiparasitics, miotics, antiparasitics, miotics, anticholinergics, adrenergics, anticholinergics, adrenergics, anticholinergics, adrenergics, antiparasitics, miotics, anticholinergics, adrenergics, antiparasitics, miotics, anticholinergics, adrenergics, antiparasitics, miotics, antiparasitics, miotics, antiparasitics, miotics, antiparasitics, antiparasitics, miotics, antiparasitics,	-	
decongestants, antiinflammatories, antiinflammatories, antiparasitics, miotics, anticholinergics, adrenergics, antivirals, local anesthetics, antifungals, amoebicidals, trichomonocidals, analgesics, antiplaucoma drugs, carbonic anhydrase inhibitors, ophthalmic agents, antineoplascics, antihypertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.		
antiinflammatories, antiparasitics, miotics, anticholinergics, adrenergics, antivirals, local anesthetics, antifungals, amoebicidals, trichomonocidals, analgesics, antifungals, amoebicidals, trichomonocidals, analgesics, antifungals, amoebicidals, trichomonocidals, analgesics, mydriatics, antiglaucoma drugs, carbonic anhydrase inhibitors, ophthalmic agents, antineoplascics, antihypertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.	·	
antiparasitics, miotics, anticholinergics, adrenergics, anticholinergics, adrenergics, antivirals, local anesthetics, antifungals, amoebicidals, trichomonocidals, analgesics, mydriatics, antiglaucoma drugs, carbonic anhydrase inhibitors, ophthalmic diagnostic agents, antineoplascics, mydriatics, antiglaucoma drugs, carbonic anhydrase inhibitors, ophthalmic diagnostic agents, ophthalmic diagnostic agents, ophthalmic diagnostic agents, ophthalmic diagnostic agents, ophthalmic agents used as adjuvants in surgery, chelating agents, antinypertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.		
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drugs, carbonic anhydrase inhibitors, ophthalmic diagnostic agents, ophthalmic agents used as adjuvants in surgery, chelating agents, antineoplascics, antihypertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.		
inhibitors, ophthalmic diagnostic agents, ophthalmic agents used as adjuvants in surgery, chelating agents, antineoplascics, antihypertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.		
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antihypertensives, muscle relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.	_	
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relaxants, diagnostics, and mixtures thereof. Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38. Agreed-upon construction: Claim 37 includes all of the limitations of claim 35, with the further requirement that the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof.		
Claim 37. 37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38. Agreed-upon construction: Claim 37 includes all of the limitations of claim 35, with the further requirement that the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof.	* *	
37. The composition of claim 35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Agreed-upon construction: Claim 37 includes all of the limitations of claim 35, with the further requirement that the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.	mixtures thereof.	
35 wherein the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 37 includes all of the limitations of claim 35, with the further requirement that the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38.		
active component is selected from the group consisting of adrenergic agonists and mixtures thereof. Claim 38. further requirement that the therapeutically active component is selected from the group consisting of adrenergic agonists and mixtures thereof.	•	
from the group consisting of adrenergic agonists and mixtures thereof. Selected from the group consisting of adrenergic agonists and mixtures thereof. Solution 18.		
adrenergic agonists and mixtures thereof. Claim 38.	•	
mixtures thereof. Claim 38.		
Claim 38.		mixtures dicteor.
	38. The composition of claim	Agreed-upon construction:
35 wherein the therapeutically Claim 38 includes all of the limitations of claim 35, with the	_	1 0 1
active component is selected further requirement that the therapeutically active component is	active component is selected	further requirement that the therapeutically active component is
		selected from the group consisting of alpha-2-adrenergic agonists
alpha-2-adrenergic agonists and mixtures thereof.		and mixtures thereof.
and mixtures thereof.		
Claim 39.		
39. The composition of claim Agreed-upon construction: 25 wherein the theorem system II. Claim 30 includes all of the limitations of claim 35 with the	-	
35 wherein the therapeutically active component is selected Claim 39 includes all of the limitations of claim 35, with the further requirement that the therapeutically active component is		
from the group consisting of selected from the group consisting of imino-imidazolines,	-	,
imino-imidazolines, imidazoles, azepines, thiazines, oxazolines,	,	

Asserted Claim of '873 Patent	Allergan's Proposed Apotex's Proposed Construction Construction
imidazolines, imidazoles,	guanidines, catecholamines, and mixtures thereof.
azepines, thiazines,	
oxazolines, guanidines,	
catecholamines, and mixtures	
thereof.	
Claim 40.	_
40. The composition of claim	Agreed-upon construction:
35 wherein the therapeutically	Claim 40 includes all of the limitations of claim 35, with the
active component includes a	further requirement that the therapeutically active component
quinoxaline component.	includes a quinoxaline component.
Claim 41.	988 <u> </u>
41. The composition of claim	Agreed-upon construction:
40 wherein the quinoxaline	Claim 41 includes all of the limitations of claim 40, with the
component is selected from	further requirement that the quinoxaline component is selected
the group consisting of	from the group consisting of quinoxalines, quinoxaline
quinoxalines, quinoxaline	derivatives, and mixtures thereof.
derivatives, and mixtures	
thereof.	
Claim 42.	
42. The composition of claim	Agreed-upon construction:
40 wherein the quinoxaline	Claim 42 includes all of the limitations of claim 40, with the
component is selected from	further requirement that the quinoxaline component is selected
the group consisting of	from the group consisting of quinoxaline, (2-imidozolin-2-
quinoxaline, (2-imidozolin-2-	ylamino) quinoxaline, brimonidine, and brimonidine tartrate, and
ylamino) quinoxaline, 5-	mixtures thereof.
bromo-6-(2-imidozolin-2-	
ylamino) quinoxaline, and	
tartrate of 5-bromo-6-(2-	
imidozolin-2-ylamino)	
quinoxaline, and mixtures	
thereof. Claim 43.	
	Agreed upon construction:
43. The composition of claim	Agreed-upon construction:
35 wherein the therapeutically	Claim 43 includes all of the limitations of claim 35, with the
active component comprises a	further requirement that the therapeutically active component
tartrate of 5-bromo-6-(2-	comprises brimonidine tartrate.
imidozolin-2-ylamino)	
quinoxaline. Claim 44.	<u> </u>
	Agreed upon construction:
44. The composition of claim	Agreed-upon construction:
35, which further includes a	Claim 44 includes all of the limitations of claim 35, with the
solubility enhancing	further requirement that the composition of claim 35, further includes a solubility enhancing component other than a
component, other than a	includes a solubility enhancing component, other than a
cyclodextrin, in an amount	cyclodextrin, in an amount effective to solubilize more of the

Asserted Claim of '873	Allergan's Proposed Apotex's Proposed
Patent	Construction Construction
effective to increase the	therapeutically active component in the composition relative to
solubility of the	the solubility of an identical therapeutically active component in
therapeutically active	a similar composition without the solubility enhancing
component in the composition	component.
relative to the solubility of an	
identical therapeutically	
active component in a similar	
composition without the	
solubility enhancing	
component.	
Claim 45.	
45. The composition of claim	Agreed-upon construction:
44 wherein the solubility	Claim 45 includes all of the limitations of claim 44, with the
enhancing component	further requirement that the solubility enhancing component
comprises a polyanionic	comprises a polyanionic component.
component.	
Claim 46.	
46. The composition of claim	Agreed-upon construction:
35 wherein the oxy-chloro	Claim 46 includes all of the limitations of claim 35, with the
component is selected from	further requirement that the oxy-chloro component is selected
the group consisting of	from the group consisting of hypochlorite components,
hypochlorite components,	perchlorate components, chlorite components and mixtures
perchlorate components,	thereof.
chlorite components and	
mixtures thereof.	
Claim 47.	
47. The composition of claim	Agreed-upon construction:
35 wherein the oxy-chloro	Claim 47 includes all of the limitations of claim 35, with the
component comprises a	further requirement that the oxy-chloro component comprises a
chlorite component.	chlorite component.
Claim 48.	
48. The composition of claim	Agreed-upon construction:
35 wherein the oxy-chloro	Claim 48 includes all of the limitations of claim 35, with the
component comprises	further requirement that the oxy-chloro component comprises
stabilized chlorine dioxide.	stabilized chlorine dioxide.
Claim 49.	
49. The composition of claim	Agreed-upon construction:
35 which is ophthalmically	Claim 49 includes all of the limitations of claim 35, with the
acceptable.	further requirement that the composition of claim 35 is
	ophthalmically acceptable.

<u>'210 patent</u>4

Asserted Claim of '210	Allowers 2n Discoursed Amedou 2n Discoursed
Patent	Allergan's Proposed Apotex's Proposed Construction Construction
Claim 1	Construction Construction
1. A therapeutically effective	Agreed-upon construction:
aqueous composition	The claim requires a therapeutically effective aqueous
comprising:	composition.
a therapeutically active alpha-	Agreed-upon construction:
2-adrenergic agonist	The claimed composition comprises a therapeutically active
component selected from the	alpha-2-adrenergic agonist component, and that component is
group consisting of 5-bromo-	selected from the group consisting of brimonidine, salts of
6-(2-imidozolin-2-ylamino)	brimonidine, or esters of brimonidine, and that component is
quinoxaline, a salt thereof,	present in an amount that is effective to provide a therapeutic
and an ester thereof in an	benefit to a patient.
amount effective to provide a	
therapeutic benefit to a patient	
to whom the composition is	
administered;	
and a polyanionic solubility	Agreed-upon construction:
enhancing component in an	The claimed composition comprises a polyanionic solubility
amount effective to increase	enhancing component, which is a component that enhances the
the solubility of the alpha-2-	solubility of the alpha-2-adrenergic agonist component. The
adrenergic agonist component	solubility enhancing component is present in such an amount
in the composition relative to the solubility of an identical	that more of the alpha-2-adrenergic agonist component is solubilized in the composition relative to a similar composition
alpha-2-adrenergic agonist	without the solubility enhancing component.
component in a similar	without the solubility childheng component.
composition without the	
solubility enhancing	
component.	
Claim 2	
2. The composition of claim 1	Agreed-upon construction:
wherein the therapeutically	Claim 2 includes all the limitations of claim 1, with the
active component comprises a	additional requirement that the therapeutically active
tartrate of 5-bromo-6-(2-	component comprises brimonidine tartrate.
imidozolin-2-ylamino)	-
quinoxaline.	
Claim 3	
3. The composition of claim 1	Agreed-upon construction:
wherein the therapeutically	Claim 3 includes all the limitations of claim 1, with the
active component is	additional requirement that the therapeutically active
substantially unionized.	component is substantially unionized.
Claim 4	

Allergan and Apotex agree on the construction of all claim terms of the '210 patent.

Asserted Claim of '210 Patent	Allergan's Proposed Apotex's Proposed Construction Construction
4. The composition of claim 1	Agreed-upon construction:
wherein the therapeutically	Claim 4 includes all the limitations of claim 1, with the
active component is	additional requirement that the therapeutically active
substantially unionized in a	component is substantially unionized in a biological
biological environment to	environment to which the composition is administered.
which the composition is	
administered.	
Claim 5	
5. The composition of claim 1	Agreed-upon construction:
wherein the therapeutically	Claim 5 includes all the limitations of claim 1, with the
active component has	additional requirement that the therapeutically active
increased diffusion through a	component has increased diffusion through a lipid membrane
lipid membrane relative to an	relative to its diffusion in a similar composition.
identical therapeutically	
active component in a similar	·
composition the solubility	
enhancing component.	
Claim 6	
6. The composition of claim 1	Agreed-upon construction:
wherein the solubility	Claim 6 includes all the limitations of claim 1, with the
enhancing component is	additional requirement that the solubility enhancing component
effective to increase the	is effective to solubilize more of the therapeutically active
solubility in a biological	component in a biological environment relative to its solubility
environment of the	in a biological environment without the solubility enhancing
therapeutically active	component.
component relative to the	
solubility in a biological environment of an identical	
therapeutically active	
component in a similar	
composition without the	
solubility enhancing	
component.	
Claim 7	
7. The composition of claim 1	Agreed-upon construction:
wherein said polyanionic	Claim 7 includes all the limitations of claim 1, with the
component is selected from	additional requirement that the polyanionic component is
the group consisting of	selected from the group consisting of anionic cellulose
anionic cellulose derivatives,	derivatives, anionic polymers derived from acrylic acid,
anionic polymers derived	anionic polymers derived from methacrylic acid, anionic
from acrylic acid, anionic	polymers derived from alginic acid, or anionic polymers
polymers derived from	derived from amino acids and mixtures thereof.
methacrylic acid, anionic	TATA TO A
polymers derived from alginic	
C4 X	L

Asserted Claim of '210	Allergan's Proposed Apotex's Proposed
Patent	Construction Construction
acid, anionic polymers	
derived from amino acids and	
mixtures thereof.	
Claim 8	A croad upon construction.
8. The composition of claim 1 wherein the solubility	Agreed-upon construction: Claim 8 includes all the limitations of claim 1, with the
enhancing component is	additional requirement that the solubility enhancing compon
selected from the group	is selected from the group consisting of anionic cellulose
consisting of anionic cellulose	derivatives or a mixtures thereof.
derivatives and mixtures	
thereof.	987.7
Claim 9	
9. The composition of claim 1	Agreed-upon construction:
wherein the solubility	Claim 9 includes all the limitations of claim 1, with the
enhancing component is	additional requirement that the solubility enhancing component
selected from the group	is selected from the group consisting of
consisting of	carboxymethylcelluloses and derivatives thereof.
carboxymethylcelluloses and	
derivatives thereof.	
Claim 10	A
10. The composition of claim	Agreed-upon construction: Claim 10 includes all the limitations of claim 1, with the
1 wherein the solubility enhancing component is	additional requirement that the solubility enhancing components
present in an amount in a	is present in the composition in an amount of approximately
range of about 0.1% (w/v) to	0.1% (w/v) to approximately 30% (w/v).
about 30% (w/v).	
Claim 11	
11. The composition of claim	Agreed-upon construction:
1 wherein the solubility	Claim 11 includes all the limitations of claim 1, with the
enhancing component is	additional requirement that the solubility enhancing component
present in an amount in a	is present in the composition in an amount of approximately
range of about 0.2% (w/v) to	0.2% (w/v) to approximately 10% (w/v).
about 10% (w/v).	
Claim 12 12 The composition of claim	Agreed year construction:
12. The composition of claim	Agreed-upon construction: Claim 12 includes all the limitations of claim 1, with the
1 wherein the solubility enhancing component is	additional requirement that the solubility enhancing component
present in an amount in a	is present in the composition in an amount of approximately
range of about 0.2% (w/v) to	0.2% (w/v) to approximately $0.6%$ (w/v).
about 0.6% (w/v).	own of the approximation of the transfer of th
Claim 13	<u> </u>
13. The composition of claim	Agreed-upon construction:
1 which has a pH of about 7	Claim 13 includes all the limitations of claim 1, with the
or greater.	additional requirement that the pH of the composition is

Asserted Claim of '210 Patent	Allergan's Proposed Apotex's Proposed Construction Construction
Latent	approximately 7 or greater.
Claim 14	approximatery 7 or greater.
14. The composition of claim	Agreed-upon construction:
1 which has a pH in a range of	Claim 14 includes all the limitations of claim 1, with the
about 7 to about 9.	additional requirement that the pH of the composition is in the
	range of approximately 7 to approximately 9.
Claim 15	
15. The composition of claim	Agreed-upon construction:
1 which is ophthalmically	Claim 15 includes all the limitations of claim 1, with the
acceptable.	additional requirement that the composition is ophthalmically
	acceptable.
Claim 16	
16. A therapeutically effective	Agreed-upon construction:
aqueous composition	The claim requires a therapeutically effective aqueous
comprising:	composition.
a therapeutically active	Agreed-upon construction:
component selected from the	The claimed composition comprises a therapeutically active
group consisting of 5-bromo-	component, and that component is selected from the group
6-(2-imidozolin-2-ylamino) quinoxaline, a salt thereof,	consisting of brimondine, salts of brimonidine, or esters of brimonidine, and that component is present in an amount that
and an ester thereof in an	is effective to provide a therapeutic benefit to a patient.
amount effective to provide a	is effective to provide a therapeutic benefit to a patient.
therapeutic benefit to a patient	
to whom the composition is	
administered;	
and an anionic cellulose	Agreed-upon construction:
derivative in an amount	The claimed composition comprises an anionic cellulose
effective to increase the	derivative, and that anionic cellulose derivative is present in an
solubility of the	amount effective to solubilize more of the therapeutically
therapeutically active	active component.
component.	
Claim 17	
17. The composition of claim	Agreed-upon construction:
16 wherein the alpha-2-	Claim 17 includes all the limitations of claim 16, with the
adrenergic agonist component	additional requirement that the alpha-2-adrenergic agonist
comprises a tartrate of 5-	component comprises brimonidine tartrate.
bromo-6-(2-imidozolin-2-	
ylamino) quinoxaline.	
Claim 18	
18. The composition of claim	Agreed-upon construction:
16 wherein the anionic	Claim 18 includes all the limitations of claim 16, with the
cellulose derivative comprises carboxymethylcellulose.	additional requirement that the anionic cellulose derivative comprises carboxymethylcellulose.
carooxymontyteenulose.	comprises carooxymentyteenthose.

Asserted Claim of '210 Patent	Allergan's Proposed Apotex's Proposed Construction Construction
Claim 19	Construction Construction
19. The composition of claim 16 wherein the anionic cellulose derivative is present in an amount in a range of about 0.2% (w/v) to about 0.6% (w/v). Claim 20	Agreed-upon construction: Claim 19 includes all the limitations of claim 16, with the additional requirement that the anionic cellulose derivative is present in an amount in a range of approximately 0.2% (w/v) to approximately 0.6% (w/v).
	A aread when construction.
20. A therapeutically effective aqueous composition comprising:	Agreed-upon construction: The claim requires a therapeutically effective aqueous composition.
a tartrate of 5-bromo-6-(2-imidozolin-2-ylamino) quinoxaline in an amount effective to provide a therapeutic benefit to a patient to whom the composition is administered;	Agreed-upon construction: The claimed composition comprises brimonidine tartrate in an amount effective to provide a therapeutic benefit to a patient.
and an anionic solubility enhancing component in an amount effective to increase the solubility of the tartrate of 5-bromo-6-(2-imidozolin-2- ylamino) quinoxaline	Agreed-upon construction: The claimed composition comprises an anionic solubility enhancing component in an amount effective to solubilize more of brimonidine tartrate.
Claim 21	
21. The composition of claim 20 wherein the solubility enhancing component comprises a carboxymethylcellulose.	Agreed-upon construction: Claim 21 includes all the limitations of claim 20, with the additional requirement that solubility enhancing component comprises a carboxymethylcellulose.
Claim 22	
22. The composition of claim 20 which is ophthalmically acceptable.	Agreed-upon construction: Claim 22 includes all the limitations of claim 20, with the additional requirement that the composition is ophthalmically acceptable.
Claim 23	
23. The composition of claim 1 which further comprises a preservative selected from the group consisting of an oxy- chloro component and a quaternary ammonium compound in an amount effective to at least assist in	Agreed-upon construction: Claim 23 includes all the limitations of claim 1, with the additional requirement that the composition further comprises either an oxy-chloro or quaternary ammonium preservative in an amount effective to assist in preserving the composition.

31 in which the preservative

Claim 33 includes all the limitations of claim 31, with the

Asserted Claim of '210 Patent	Allergan's Proposed Apotex's Proposed Construction Construction
comprises an oxy-chloro	additional requirement that the preservative comprises an oxy-
component.	chloro component.
Claim 34	
34. The composition of claim	Agreed-upon construction:
31 in which the preservative	Claim 33 includes all the limitations of claim 31, with the
comprises a chlorite	additional requirement that the preservative comprises a
component.	chlorite component.

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'337 patent⁵

Asserted Claim of '337	Allergan's Proposed Apotex's Proposed
Patent	Construction Construction
Claim 1	
1. A therapeutically	Agreed-upon construction:
effective ophthalmic	The claim requires a therapeutically effective ophthalmic
composition comprising:	composition.
an alpha-2-adrenergic	Agreed-upon construction:
agonist component in an	The claimed composition contains an alpha-2-adrenergic agonist
amount effective to	component, and that component is present in an amount that is
provide a therapeutic	effective to provide a therapeutic benefit to a patient.
benefit to a patient in	
whom the composition is	
administered; and	
a solubility enhancing	Agreed-upon construction:
component other than a	The claimed composition contains a solubility enhancing component,
cyclodextrin in an amount	which is a component that enhances the solubility of the alpha-2-
effective to increase the	adrenergic agonist component, and any solubility enhancing
solubility of the alpha-2-	component other than a cylclodextrin is covered by the claim. The
adrenergic agonist	solubility enhancing component is present in such an amount that the
component in the	more of the alpha-2-adrenergic agonist component in the composition
composition relative to	is solubilized relative to a similar composition without the solubility
the solubility of an	enhancing component.
identical alpha-2-	
adrenergic agonist	
component in a similar	
composition without the	
solubility enhancing	
component.	
Claim 2	
2. The composition of	Agreed-upon construction:
claim 1 wherein the	Claim 2 contains all the limitations of claim 1, with the additional
alpha-2-adrenegic	requirement that the alpha-2-adrenergic agonist component is selected
component is selected	from the group consisting of an imino-imidazoline, imidazoline,
from the group consisting	imidazole, azepine, thiazine, oxazoline, guanidine, catecholamine,
of imino-imidazolines,	derivative thereof, or mixture thereof.
imidazolines, imidazoles,	
azepines, thiazines,	
oxazolines, guanidines,	
catecholamines,	
derivatives thereof, and	
mixtures thereof.	

Allergan and Apotex agree on the construction of all claim terms of the '337 patent.

component comprises an

anionic polymer.

Asserted Claim of '337	Allergan's Proposed Apotex's Proposed
Patent	Construction Construction
anionic polymer.	
Claim 8	
8. The composition of	Agreed-upon construction:
claim 3 wherein said	Claim 8 includes all the limitations of claim 3, with the further
solubility enhancing	requirement that the solubility enhancing component comprises an
component comprises an	anionic polymer.
anionic polymer.	
Claim 9	
9. The composition of	Agreed-upon construction:
claim 1 which further	Claim 9 includes all the limitations of claim 1 with the further
comprises an effective	requirement that the composition further comprises an effective
amount of a preservative.	amount of a preservative.
Claim 10	
10. The composition of	Agreed-upon construction:
claim 6 which further	Claim 10 includes all the limitations of claim 6 with the further
comprises an effective	requirement that the composition further comprises an effective
amount of a preservative.	amount of a preservative.

'834 patent⁶

Asserted Claim-of	Allergan's Proposed	Apotex's Proposed	Exela's Proposed
'834 Patent	Construction	Construction	Construction
Claim 1			
1. A therapeutically effective aqueous ophthalmic composition comprising:	The claim requires a therapeutically effective aqueous ophthalmic composition.	The claim requires a therapeutically effective aqueous ophthalmic composition.	
	See, e.g., '834 patent file history, Reply to office action, dated Mar. 24, 2003.	See, e.g., '834 patent file history, Reply to office action, dated Mar. 24, 2003.	A water-based
up to about 0.15% (w/v) of 5-bromo-6- (2-imidozolin-2- ylamino) quinoxaline tartrate,	The claimed composition comprises up to approximately 0.15% brimonidine tartrate.	The claimed composition comprises up to approximately 0.15% brimonidine tartrate.	formulation containing between 0% and about 0.15% (w/v) of brimonidine tartrate for ophthalmic administration that is
	The ordinary meaning of the term "about" is "approximately." See Merck & Co., Inc. v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1377 (Fed. Cir. 2005); Allergan Inc. v. Alcon Inc., No. 04-968 (GMS) (D. Del. July 26, 2005) (order construing the terms of U.S. patent nos. 6,673,337 and 6,641,834).	The ordinary meaning of the term "about" is "approximately." See Merck & Co., Inc. v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1377 (Fed. Cir. 2005); Allergan Inc. v. Alcon Inc., No. 04-968 (GMS) (D. Del. July 26, 2005) (order construing the terms of U.S. patent nos. 6,673,337 and 6,641,834).	demonstrated to provide a therapeutic benefit to a patient to whom the formulation is administered. See, e.g., '834 patent file history, Reply to Office Action, dated Mar. 24, 2003; Col. 3:23-29, Col. 10:65-Col11:3.
	See, e.g., '834 patent, Fig. 1; col. 1, lines 33-53; col. 2, lines 48-52; col. 3, lines 23-36; col. 6, lines 8- 16; col. 11, lines 1-6;		

⁶ Allergan and Apotex agree on the construction of all claim terms of the '834 patent.

Asserted Claim of	Allergan's Proposed	Apotex's Proposed	Exela's Proposed
Asserted Claim of '834 Patent the composition having a pH of about 7.0 or greater,	Example 2; Table IV; '834 patent file history, Reply to Office Action, dated Mar. 24, 2003; Application No. 09/904,018. The claimed composition has a pH of approximately 7.0 or greater. The ordinary meaning of the term "about" is "approximately." See Merck & Co., Inc. v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1377 (Fed. Cir. 2005); Allergan Inc. v. Alcon Inc., No. 04-968 (GMS) (D. Del. July 26, 2005) (order construing the terms of U.S. patent nos. 6,673,337 and 6,641,834). See, e.g., '834 patent,	The claimed composition has a pH of approximately 7.0 or greater. The ordinary meaning of the term "about" is "approximately." See Merck & Co., Inc. v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1377 (Fed. Cir. 2005); Allergan Inc. v. Alcon Inc., No. 04-968 (GMS) (D. Del. July 26, 2005) (order construing the terms of U.S. patent nos. 6,673,337 and 6,641,834).	The therapeutically effective formulation referred to above has a pH of 7.0 or greater within measurement tolerances. In no event can the claim cover a formulation having a pH of 6.8 or below. pH: pH is a value taken to represent the acidity or alkalinity of an aqueous solution; it is defined as the logarithm of the reciprocal of the hydrogen-ion concentration of a solution: pH = log ₁₀ 1/[H ⁺]
	See, e.g., '834 patent, Figure 1; col. 4, lines 22-33; col. 11, lines 1-6; Example 2; '834 patent file history, Reply to Office Action, dated Mar. 24, 2003; Application No. 09/904,018.		pH = log ₁₀ 1/[H [']] Because the pH scale is logarithmic, the intervals are exponential and thus represent far greater differences in concentration than the values themselves seem to indicate. (Hawley's Condensed Chemical Dictionary, 853- 54 (2001)).
			See, e.g., '834 patent file history, Reply to Office Action, dated Mar. 24,

Asserted Claim of '834 Patent	Allergan's Proposed Construction	Apotex's Proposed Construction	Exela's Proposed Construction
			2003.
			During prosecution, applicants disclaimed any pH at or below 6.8 with regard to the - "having a pH of about 7.0 or greater" claim limitation.
			In order to overcome a § 103(a) reference to Burke (U.S. Patent No. 5,215,991) and Beck (U.S. Patent No. 6,358,935), applicant argued that "the present invention is the result of the <i>surprising finding</i> that increasing the pH of a brimonidine solution to a pH of greater than about 7.0 leads to similar efficacy at a 25% lower concentration (from 0.2% (w/v) to about 0.15% (w/v) or less) than is seen in a brimonidine solution at a pH of about 6.6-6.8."
	The state of the s		See also Preliminary Amendment dated Nov.
			11, 2002, adding for the first time the limitation
			"the composition having a pH of about 7.0 or
			greater"; the specification as filed
	-		referred to a pH of about
			7 or greater. The use of an additional decimal
			place (i.e., 7.0) in the

Asserted Claim of '834 Patent	Allergan's Proposed Construction	Apotex's Proposed Construction	Exela's Proposed Construction
			claim signifies to one skilled in the art that the patentee intends precision to at least one decimal place.
			This interpretation is confirmed in the specification in Figure 1, Figure 1 presents solubility data for tests on formulations containing 0.2% brimonidine tartrate. The data shown in Figure 1 is taken from Table IV but omits (and thereby disclaims) all data points for pH values of below 7.0. Specifically excluded are 6.93, 6.68, and 6.67. See also Col. 1:32-45; See Pall Corp. v. Micron Separations, Inc., 66 F.3d 1211, 1217 (Fed. Cir. 1995).
			See also Allergan, Inc. v. Alcon Inc., C.A. No. 04-968, 2005 U.S. Dist. LEXIS 32436, at *11 (D. Del. Dec. 8, 2005) ("According to the specification, the claimed compositions enhance the effectiveness of brimonidine tartrate (and other alpha-2-adrenergic agonist components) by increasing its apparent water solubility at pHs higher than neutral, or 7.0") (emphasis added).

Asserted Claim of '834 Patent	Construction Construction	Exela's Proposed Construction	
and the 5-bromo-6-	Agreed-upon construction - The brimonidine tartrate is soluble in the		
(2-imidozolin-2-	composition at approximately 21° C.		
ylamino)			
quinoxaline tartrate			
being soluble in the			
composition at			
about 21° C.			
Claim 2	<u> </u>		
2. The composition	Agreed-upon construction - Claim 2 includes all	the limitations of claim	
of claim 1 which	1, with the additional requirement that the compo		
includes up to	0.15% brimonidine tartrate.	*	
0.15% (w/v) of 5-			
bromo-6-(2-			
imidozolin-2-			
ylamino)			
quinoxaline tartrate.			
Claim 3	<u></u>		
3. The composition	Agreed-upon construction - Claim 3 includes all	the limitations of claim	
of claim 1 which	1, with the additional requirement that the compo		
includes about	approximately 0.15% brimonidine tartrate.		
0.15% (w/v) of 5-	approximately 0.1370 orintername turnute.		
bromo-6-(2-			
imidozolin-2-			
ylamino)			
quinoxaline tartrate.			
Claim 4			
4. The composition	Agreed-upon construction - Claim 4 includes all	the limitations of claim	
of claim 1 which	1, with the additional requirement that the compo		
included 0.15%	brimonidine tartrate.	obtain morados 0.1570	
(w/v) of 5-bromo-6-	ormonane arrate.		
(2-imidozolin-2-			
ylamino)			
quinoxaline tartrate.			
Claim 5			
5. The composition	Agreed-upon construction:	Not applicable to Exela.	
of claim 1 having a	Claim 5 includes all the limitations of claim 1,	rvot applicable to Excla.	
pH of 7.0 or greater.	with the additional requirement that the pH of		
pri or 7.0 or greater.	the composition is 7.0 or greater.		
Claim 6	uie composition is 7.0 of greater.		
	Agreed upon construction Claim 6 includes all	the limitations of alaim 1	
6. The composition of claim 1 which	Agreed-upon construction - Claim 6 includes all the limitations of claim 1		
	and further requires that the composition further comprises either an oxy-		
further comprises a	chloro or quaternary ammonium preservative in an amount effective to		
preservative	assist in preserving the composition.		
selected from the			

			r 1 2 D
Asserted Claim of 2834 Patent	Allergan's Proposed Construction	Apotex's Proposed Construction	Exela's Proposed Construction
group consisting of			
an oxy-chloro			
component and a			
quaternary			·
ammonium			
compound in an			
amount effective to			
at least assist in			
preserving the			
composition.			
Claim 7			1975 A. 1
7. The composition	Agreed-upon constructi	on:	Not applicable to Exela.
of claim 6 wherein	Claim 7 includes all the		
the oxy-chloro	and further requires tha	t the oxy-chloro	
component	component comprises a	chlorite component.	
comprises a chlorite	***		
component.			
Claim 8			
8. The composition	Agreed-upon	Not applicable.	Agreed-upon
of claim 1 which is	construction - Claim	Allergan did not	construction - Claim 8
substantially free of	8 includes all the	assert this claim	includes all the
anionic cellulosic	limitations of claim 1	against Apotex.	limitations of claim 1
derivatives.	and further requires		and further requires that
	that the composition		the composition be
	be substantially free		substantially free of
	of anionic cellulosic		anionic cellulosic
	derivatives.		derivatives.
Claim 9			
9. The composition	Agreed-upon	Not applicable to	Agreed-upon
of claim 1 which is	construction - Claim	Apotex.	construction - Claim 9
substantially free of	9 includes all the		includes all the
carboxymethyl	limitations of claim 1		limitations of claim 1
cellulose.	and further requires		and further requires that
	that the composition		the composition be
	be substantially free		substantially free of
	of carboxymethyl		carboxymethyl cellulose
	cellulose.		
Claim 10	The claim requires a	The claim requires a	
10. A	The claim requires a	therapeutically	A water-based
therapeutically	therapeutically	effective aqueous	formulation containing
effective aqueous	effective aqueous	effective aqueous	101111utation containing

Asserted Claim of	Allergan's Proposed	Apotex's Proposed	Exela's Proposed
'834 Patent ophthalmic	Construction ophthalmic	Construction ophthalmic	Construction
composition	composition.	composition.	
comprising:	•	~	
	See, e.g., '834 patent	See, e.g., '834 patent	
	file history, Reply to office action, dated	file history, Reply to office action, dated	
	Mar. 24, 2003.	Mar. 24, 2003.	
up to about 0.15%	The claimed	The claimed	
(w/v) of a	composition	composition	
component selected	comprises up to	comprises up to	
from the group	approximately 0.15%	approximately 0.15%	14 j
consisting of 5- bromo-6-(2-	brimondine, salts of brimonidine, esters of	brimondine, salts of brimonidine, esters of	
imidozolin-2-	brimonidine, or	brimonidine, or	
ylamino)	mixtures of the	mixtures of the	between 0% and about
quinoxaline, salts of	foregoing.	foregoing.	0.15% (w/v) of a
5-bromo-6-(2-	 		component selected from
imidozolin-2-	The ordinary meaning	The ordinary meaning	the group consisting of:
ylamino) quinoxaline, esters	of the term "about" is "approximately." See	of the term "about" is "approximately." See	brimonidine; salts of brimonidine; esters of
of 5-bromo-6-(2-	Merck & Co., Inc. v.	Merck & Co., Inc. v.	brimonidine; or mixtures
imidozolin-2-	Teva Pharms. USA,	Teva Pharms. USA,	thereof, for ophthalmic
ylamino)	Inc., 395 F.3d 1364,	Inc., 395 F.3d 1364,	administration that is
quinoxaline and	1377 (Fed. Cir.	1377 (Fed. Cir.	demonstrated to provide
mixtures thereof,	2005); Allergan Inc.	2005); Allergan Inc.	a therapeutic benefit to a
	v. Alcon Inc., No. 04- 968 (GMS) (D. Del.	v. Alcon Inc., No. 04- 968 (GMS) (D. Del.	patient to whom the formulation is
	July 26, 2005) (order	July 26, 2005) (order	administered.
	construing the terms	construing the terms	damminotorou.
	of U.S. patent nos.	of U.S. patent nos.	See claim 1.
	6,673,337 and	6,673,337 and	
	6,641,834).	6,641,834).	
	See, e.g., '834 patent,		
	Fig. 1; col. 1, lines		
	33-53; col. 2, lines		
	48-52; col. 3, lines	-	
	23-36; col. 6, lines 8-		
	16; col. 11, lines 1-6;		
	Example 2; Table IV; '834 patent file	PATRON 1	
	history, Reply to		1
	Office Action, dated		
	Mar. 24, 2003;		

Asserted Claim of	Allergan's Proposed	Apotex's Proposed	Exela's Proposed
'834 Patent	Construction	Construction	Construction
	Application No. 09/904,018.		
the composition having a pH of about 7.0 or greater,	The claimed composition has a pH of approximately 7.0 or greater. The ordinary meaning of the term "about" is "approximately." See Merck & Co., Inc. v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1377 (Fed. Cir. 2005); Allergan Inc. v. Alcon Inc., No. 04-968 (GMS) (D. Del. July 26, 2005) (order construing the terms of U.S. patent nos. 6,673,337 and 6,641,834). See, e.g., '834 patent, Figure 1; col. 4, lines 22-33; col. 11, lines 1-6; Example 2; '834 patent file history, Reply to Office Action, dated Mar.	The claimed composition has a pH of approximately 7.0 or greater. The ordinary meaning of the term "about" is "approximately." See Merck & Co., Inc. v. Teva Pharms. USA, Inc., 395 F.3d 1364, 1377 (Fed. Cir. 2005); Allergan Inc. v. Alcon Inc., No. 04-968 (GMS) (D. Del. July 26, 2005) (order construing the terms of U.S. patent nos. 6,673,337 and 6,641,834).	The therapeutically effective formulation referred to in claim 10 having a pH of 7.0 or greater within measurement tolerances. In no event can the claim cover a formulation having a pH of 6.8 or below. See claim 1.
and the component	24, 2003; Application No. 09/904,018.	ion. The huimanidine to	whata is soluble in the
and the component being soluble in the composition at about 21° C.	Agreed-upon construct	ion - The brimonidine ta mately 21° C.	rtrate is soluble in the

Claim 11				
11. The composition	Agreed-upon constructi	on - Claim 11 includes a	all the limitations of claim	
of claim 10 which	10, with the additional i	requirement that the com	position includes up to	
includes up to	0.15% of the brimonidi	ne component.	•	
0.15% (w/v) of the		*		
component.				
Claim 12				
12. The composition	Agreed-upon constructi	on - Claim 12 includes a	all the limitations of claim	
of claim 10 which		requirement that the com		
includes about		f the brimonidine compo		
0.15% (w/v) of the		•		
component		68 Fa		
Claim 13	······································		44440044440000000000000000000000000000	
13. The composition	Agreed-upon constructi	on - Claim 13 includes a	all the limitations of claim	
of claim 10 which			position includes 0.15%	
includes 0.15%	of the brimonidine com			
(w/v) of the		-		
component				
Claim 14				
14. The composition	Agreed-upon constructi	ion:	Not applicable.	
of claim 10 having a	Claim 14 includes all th	ne limitations of claim		
pH of 7.0 or greater.	10, with the additional	10, with the additional requirement that the		
	pH of the composition is 7.0 or greater.			
Claim 15				
15. The composition	Agreed-upon constructi		Not applicable.	
of claim 10, which	Claim 15 includes all the	ne limitations of claim	74 AND 10	
further comprises an	10, and further requires			
oxy-chloro	further comprises an ox			
component in an	an amount effective to	assist in preserving the		
amount effective to	composition.			
at least assist in				
preserving the				
composition.				
Claim 16	T			
16. The composition	Agreed-upon to constru		Not applicable.	
of claim 15 wherein	1	Claim 16 includes all the limitations of claim		
the oxy-chloro	15, with the additional	^	<u> </u>	
component	oxy-chloro component	comprises a chlorite		
comprises a chlorite	component.			
component.				
Claim 17	T	T	<u> </u>	
17. The composition	Agreed-upon	Not applicable.	Agreed-upon	
of claim 10 which is	construction - Claim		construction - Claim 17	
substantially free of	17 includes all the		includes all the	
anionic cellulosic	limitations of claim		limitations of claim 10	

derivatives.	10 and further requires that the composition be substantially free of anionic cellulosic derivatives.		and further requires that the composition be substantially free of anionic cellulosic derivatives.
Claim 18			
18. The composition of claim 10 which is substantially free of carboxymethyl cellulose.	Agreed-upon construction - Claim 18 includes all the limitations of claim 10 and further requires that the composition be substantially free of carboxymethyl cellulose.	Not applicable.	Agreed-upon construction - Claim 18 includes all the limitations of claim 10 and further requires that the composition be substantially free of carboxymethyl cellulose.
Claim 20			1
20. The composition of claim 10 which further comprises a preservative selected from the group consisting of an oxy-chloro component and a quaternary ammonium compound in an amount effective to at least assist in preserving the composition.	10, with the additional either an oxy-chloro or	requirement that the con	all the limitations of claim apposition further comprises preservative in an amount
Claim 22	T A 1	•	Tar dr dd
22. The composition of claim 20 in which the preservative comprises a oxychloro component.	Agreed-upon construct Claim 22 includes all to 20, with the additional preservative comprises component.	he limitations of claim requirement that the	Not applicable.

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Dated: June 3, 2008

867646

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on June 3, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

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